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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,971	09/24/2003	Manfred Boller	2001P02943WOUS	1458

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EXAMINER

HAGEMAN, MARK

ART UNIT PAPER NUMBER

3653

DATE MAILED: 08/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/668,971	Applicant(s) BOLLER ET AL.	
	Examiner Jonathan R. Miller	Art Unit 3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20060530, 20040422 (by plaintiff)</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-9 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Schuster et al. The reference discloses placing an empty receiving container (7) on a holder (10); inserting the container and holder on a guide (11) beneath a destination point (2); withdrawing the receiving container and holder at least once for filling with sorted items, a withdrawing direction being crosswise with respect to a sorting path direction and opposite to an insertion direction; reinserting the container and holder after the filling; raising the container from the holder in response to a control command, the raising being performed by a lift (col. 4, lines 43+) withdrawing the holder in an opposite direction to an insertion direction; lowering the receiving container via the lift onto the transport facility situated beneath the destination point; transporting the receiving container away from the destination point via the transport facility (col. 4, lines 14+); and moving the lift into an idle position (col. 2, lines 25+; Fig. 2).
3. With regards to claim 2, the reference further discloses the step of replacing the container with another container at the destination point (col. 4, lines 54+).
4. With regards to claim 3, the reference further discloses the steps of: prior to the step of lowering, determining if a space below the container is occupied, and if the space is occupied, not performing the step of lowering (col. 4, lines 9+).

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5. With regards to claim 4, the reference further discloses a sorting path (5) along which the container (7) can be filled with the sorted items; a plurality of destination points positioned along the sorting path, the destination points providing the sorting items to the container; a transport facility located proximate to the sorting path and destination points, the transport facility transporting the container from a destination point (col. 3, lines 53+); a holder (10) for accommodating the container therein; a guide (11) facilitating lateral movement of the holder beneath the destination point and configured to position the container in and out of a filling position, the filling position being a position wherein the container can be filled with the sorted items; and a lift (12) located proximate to the container, the lift facilitating raising and lowering of the container from the holder to the transport facility (8) (col. 4, lines 14+).

6. With regards to claim 5, the reference further discloses means for moving the container from a filling position into and out of a ready position beneath the destination point (col. 4, lines 14+).

7. With regards to claim 6, the reference further discloses the holder (10) comprises a holding frame (11) facilitating accommodation of the container and a handle (12) facilitating movement of the holder.

8. With regards to claim 7, the reference further discloses at least one actuation element effecting initiation of a control command for removal and transportation of the receiving container (col. 4, lines 54+).

9. With regards to claim 8, the reference further discloses the lift further comprises means for first raising the receiving container from the ready position and, after the holder has moved into the filling position, lowering the container onto the transport facility (col. 4, lines 43+).

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10. With regards to claim 9, the reference further discloses control elements for controlling and monitoring the removal and transportation of the receiving container (col. 4, lines 54+).

11. With regards to claim 15, the reference further discloses a transport facility section composed of a plurality of destination points (Fig. 1).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 10-14, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuster et al. in view of Olson et al. Schuster et al. fails to explicitly disclose means for detecting a presence of the receiving container in the ready position, means for detecting the holder in the filling position, at least one control element is located at an uppermost and lowermost position of the lift and further comprises means for detecting if the lift is in the uppermost and lowermost positions, at least one control element comprises means for detecting an idle position of the lift, at least one control element comprises means for controlling and monitoring the removal and transportation of the receiving container on the transport facility at least one control element is located at a beginning and end of a transport facility section, at least one control element is located at a beginning or end of a transport facility section. Olsen et al. discloses the use of sensors to determine positions of different elements to facilitate control of the apparatus (col. 17, lines 1+). Additionally, the use of sensors to determine positions of different elements to facilitate control of the apparatus is well known in the art of mail sorters.

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At the time of the invention, it would have been obvious to one of ordinary skill in the art to utilize control elements to facilitate automatic control of the apparatus. Schuster et al. and Olson et al. are analogous art as they are from the same field of endeavor: mail sorters.

Response to Arguments

14. Applicant's arguments filed 5/30/06 have been fully considered but they are not persuasive. Applicant contends that the reference does not teach the particular interaction of moving the container, holder and lift, and further states that the application and the reference are based on different concepts. Examiner disagrees with the first assertion and contends that the different concepts notwithstanding, the reference teaches the limitations of the claims as set forth above.

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan R. Miller whose telephone number is (571) 272-6940. The examiner can normally be reached on M-F: 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey can be reached on (571) 272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jrm



**PATRICK MACKEY
PRIMARY EXAMINER**